

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ERIC B. SMITH,

Plaintiff,

v.

**Case No. 2:18-cv-577
JUDGE GEORGE C. SMITH
Magistrate Judge Vascura**

**COMMISSIONER OF SOCIAL
SECURITY,**

Defendant.

ORDER

This case is before the Court to consider the *Report and Recommendation* issued by the Magistrate Judge on March 1, 2019. The Magistrate Judge recommended that Plaintiff's Statement of Errors be overruled and the decision of the Commissioner of Social Security be affirmed. (*See Report and Recommendation*, Doc. 19). This matter is now before the Court on Plaintiff's Objections to the Magistrate Judge's *Report and Recommendation*. (Doc. 20). The Court will consider the matter *de novo*. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Plaintiff raises a single objection to the ALJ's and Magistrate Judge's findings: that the ALJ incorrectly found that Plaintiff's mental health impairments were not severe. Specifically, Plaintiff argues that because the ALJ acknowledged that Plaintiff demonstrated a severe psychological impairment "at one point," the ALJ should have considered his psychological impairments when crafting Plaintiff's residual functional capacity ("RFC"). (Doc. 20, Obj. at 3).

Plaintiff's objection presents the same issue already presented to, and carefully considered by, the Magistrate Judge in the *Report and Recommendation*. Plaintiff has not presented any new

evidence or argument other than what was previously presented in his Statement of Errors. Plaintiff merely disagrees with the ALJ and Magistrate Judge's conclusions, specifically with respect to the severity of his mental health impairments. However, the ALJ noted that while records submitted post-hearing "appear to indicate more serious symptoms [of] depression, this evidence is so recent that it does not support that this condition has lasted at a severe level or impacted his functioning for at least twelve continuous months from the date of onset (see SSR 82-52) (Exhibits 25F; 26F)." (R. at 19.) The ALJ further noted that the symptoms reported in the post-hearing records appeared to be "exacerbated by four recent deaths" in Plaintiff's family, and that Plaintiff's complaints in these records "bear little relationship to his reports throughout the rest of the file and, thus, raise serious questions as to consistency and supportability." (R. at 19.)

Moreover, Plaintiff does not identify any limitations that should have been included in his RFC. As noted by the Magistrate Judge: "While Dr. Olenick and Gebhart found that Plaintiff tended to lose his train of thought and/or suffer from confusion, their opinions fail identify or explain how these findings translate into limitations, if any, on Plaintiff's ability to perform basic work activities." (Doc. 19, R&R at 20 n.2). If Plaintiff's psychological impairments did not require any additional RFC limitations, then the ALJ's failure to address the psychological impairments in crafting the RFC is necessarily harmless. In sum, the Court agrees with the Magistrate Judge's conclusions regarding the ALJ's RFC assessment.

The Court has carefully considered Plaintiff's objection, but finds that the decision of the ALJ was supported by substantial evidence as acknowledged in detail in the Magistrate Judge's *Report and Recommendation*. Therefore, for the reasons stated in the well-reasoned *Report and Recommendation*, this Court finds that Plaintiff's objection is without merit.

Based on the aforementioned and the detailed *Report and Recommendation*, the Court finds that Plaintiff's objection has been thoroughly considered and is hereby **OVERRULED**. Accordingly, the *Report and Recommendation*, Document 19, is **ADOPTED** and **AFFIRMED**. Plaintiff's Statement of Errors is hereby **OVERRULED**, and the decision of the Commissioner of Social Security is **AFFIRMED**.

The Clerk shall remove Documents 19 and 20 from the Court's pending motions list, and enter final judgment in favor of Defendant, the Commissioner of Social Security.

IT IS SO ORDERED.

/s/ *George C. Smith*
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT